

## MONTEBELLO OVERSIGHT BOARD

### AGENDA STAFF REPORT

**TO:** Honorable Chairman and Members of the Montebello Oversight Board

**FROM:** Francesca Tucker Schuyler, Executive Director of the Successor Agency

**BY:** Michael A. Huntley, Director of Planning and Community Development  
Christopher G. Cardinale, Assistant City Attorney

**SUBJECT:** Oversight Board Approval of the Transfer of real property assets (Police Facility, City Hall, and Henry Acuna Park) from the Montebello Successor Agency to the City of Montebello (APN 5294-014-903 and 5294-014-900)

**DATE:** July 24, 2013

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#### **OBJECTIVE**

That the Montebello Oversight Board adopts a resolution approving the transfer of real property that includes the Montebello Police Facility, Montebello City Hall, and Henry Acuna Park from the Montebello Successor Agency to the City of Montebello.

#### **BACKGROUND**

**A. Title To The Montebello Police Facility, Montebello City Hall, and Henry Acuna Park Is Vested In The Dissolved Community Redevelopment Agency of the City of Montebello**

Over the years the City, the Community Redevelopment Agency of the City of Montebello ("Agency"), and the Montebello Public Improvement Corporation ("MPIC") entered into a series of transactions to finance the construction and/or improvement of certain public facilities.

One such transaction was issuance of the 1992 Certificates of Participation ("1992 COPs issued by the City to finance an expansion of the Montebello Police Facility. (**Attachment "A"** [1992 COP Official Statement].) As part of the transaction, the Agency purchased the Police Facility and related land from the City via a Deed and Acquisition Agreement. (**Attachment "B"** [Deed and Acquisition Agreement].) Though the purpose of the transaction was specific to the Police Facility, the Deed and Acquisition Agreement transferred the entirety of two (2) City-owned parcels to the City:

**"Parcel # 1"** – the location of the Police Facility and Montebello City Hall, identified as Assessor Parcel Number ("APN") 5294-014-930 and Parcel # 1 on **Attachment "C"** (parcel map) hereto; and

**"Parcel # 2"** – the property located immediately north of the Police Facility, and the location of Henry Acuna public park, APN 5294-014-900 and Parcel # 2 on Attachment "C" hereto.

To complete the 1992 COPs transaction, Parcel # 1 and Parcel # 2 (jointly the **"Properties"**) were leased back to the City, and the City subsequently executed a sub-lease and leaseback with the MPIC. The City's payments under the lease agreement with the MPIC were subsequently assigned to satisfy the debt service obligations on the 1992 COPs.<sup>1</sup>

The 1992 COPs were subsequently refunded under an identical financial structure by way of the 1993 Certificates of Participation, which were in turn refunded by the most recent issuance; the 2000 Certificates of Participation (**"2000 COPs"**).

In attempts to take advantage of favorable market rates, the City recently initiated the process of refinancing the 2000 COPs. However in the latter stages of this process, a preliminary title report revealed the Agency's ownership of the Properties. In light of the Agency's dissolution by way of Assembly Bill (**"AB"**) 1x26, the Agency's ownership of the Properties has become a bar to the City's refunding efforts, with the Underwriters requiring that ownership of the Properties be returned to the City before the refinancing transaction may be completed.

#### **B. The Dissolution Act**

##### **1) Upon Dissolution of the Agency, the Properties Were Passed to the Successor Agency**

On February 1, 2012, the Agency was dissolved by way of AB 1x26 and the California Supreme Court's ruling in *California Redevelopment Association v. Matosantos* (2011) 53 Cal.4th 231. AB 1x26, as subsequently amended by AB 1484 the **"Dissolution Act,"** created a "successor agency" for each dissolved redevelopment agency which, in this case, is governed by the City of Montebello (the **"Successor Agency"**).

Upon dissolution of the Agency, all Agency assets and real properties – including the Properties – were transferred to the control of the Successor Agency for management in accordance with Dissolution Act mandates. (Health & Safety Code<sup>2</sup> §§ 34173(b), 34175(b).) Notably, the Successor Agency is a separate and independent public entity from the City, and its assets and liabilities remain distinct from the City's. (34173(g).)

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<sup>1</sup> For the Oversight Board's reference, the former Agency pledged to satisfy the City's lease payments under the 1992 COPs and all subsequent refunding thereof by way of a "Reimbursement Agreement," the latest version of which is the 2000 Reimbursement Agreement which has been recognized by the Department of Finance as an "enforceable obligation." The Agency's payment obligations under the Reimbursement Agreement expire during the 2014-15 Fiscal Year.

<sup>2</sup> All subsequently statutory references herein are to California's Health & Safety Code.

2) Disposal of former Redevelopment Agency Properties Under the Dissolution Act

The Dissolution Act contains several inter-related and complex provisions regulating the disposal of the Agency's real property assets. Critically, these provisions – which are set forth in full in **Attachment “D”** hereto for the Oversight Board's reference (Sections 34177(e), 34181(a), 34191.3, and 34191.5) – make a distinction between the disposal of “governmental purpose” properties, and all other “non-housing” redevelopment agency-owned properties.<sup>3</sup> The Dissolution Act defines “governmental purpose” properties as “roads, school buildings, parks, police and fire stations, libraries, and local agency administration buildings.” (§ 34181(a).)

To assist successor agencies and oversight boards in applying these complex provisions, the Department of Finance (“DOF”) has issued guidelines summarizing the different process applicable to the disposal of “governmental purpose” properties and “all other properties.” (See **Attachment “E”**.) These Guidelines, along with the pertinent explanation and statutory authority, are set forth in the chart below:

<u><b>Disposal of Governmental Purpose Properties</b></u>	
<u><b>Action</b></u>	<u><b>Explanation / Statutory Authority</b></u>
1. Successor Agency submits a request to transfer governmental purpose property transfers to the Oversight Board for approval.	All successor agency actions to transfer ownership of those assets that were constructed and used for a governmental purpose, such as roads, school buildings, parks, police and fire stations, libraries, and local agency administrative buildings, to the appropriate public jurisdiction pursuant to any existing agreements relating to the construction or use of such an asset shall be submitted to the Oversight Board for approval. (§§ 3181(a),(f).)
2. Oversight Board approves the transfer of the governmental purpose property to the appropriate public jurisdiction.	See above.
3. DOF reviews Oversight Board action approving the property transfer.	The actions of the Oversight Board shall be subject to review by DOF to Section 34179, except that DOF may extend its review period by up to 60 days. (§§ 34179(h), 34181(f).)

<sup>3</sup> The Dissolution Act sets forth a separate process for the transfer of “housing-related” assets from the Successor Agency to the “Housing Successor Agency.” (See § 34176.)

4. DOF approval / rejection of Oversight Board Action	<p>If DOF objects to the transfer, the property shall remain with the successor agency for inclusion in the Long-Range Property Management Plan.</p> <p>If no action or objection is made by the DOF, the Oversight Board action is considered final and conclusive. (§ 34181(f).)</p>
<b><u>All Other “Non Housing” Property</u></b>	
<b><u>Action</u></b>	<b><u>Explanation / Statutory Authority</u></b>
1. The successor agency completes the “due diligence review” (“ <b>DDR</b> ”) and the low-and-moderate-income housing fund (“ <b>LMIHF</b> ”), and remits any funds identified as being available for allocation to taxing entities.	By December 1, 2012, the county auditor-controller shall provide DOF a report specifying the amount submitted by each successor agency pursuant to the LMIHF DDR and specifically noting those successor agencies that have failed to remit the full required amount. (§ 34179(g).)
2. The successor agency completes the “all other funds and accounts” (“ <b>OAF</b> ”) DDR, and remits any funds identified as being available for allocation to taxing entities.	By April 20, 2013, the county auditor-controller shall provide DOF a report specifying the amount submitted by each successor agency pursuant to the AOF DDR and specifically noting those successor agencies that have failed to remit the full required amount. (§ 34179(g).)
3. DOF issues a Finding of Completion to the Successor Agency.	DOF will issue a finding of completion to the successor agency once the full amount as determined during the DDR reviews has been paid, the county auditor-controller has reported these payments to DOF, and the full amount of the July True-Up determinations has been paid. (§ 34179.7.)
4. Completion and Approval of Long Range Property Management Plan (“ <b>LRPMP</b> ”).	Within six (6) months of receiving a finding of completion, the Successor Agency shall develop LRPMP and submit the plan to the Oversight Board and DOF for approval. (§ 34191.5.)
5. Property disposition.	Upon approval of the LRPMP, the Successor Agency may begin disposal of and sell property pursuant to their approved plan. (§ 34191.5.)

As set forth above, the Dissolution Act – and the Department of Finance – authorize the transfer of “governmental purpose” properties from the Successor Agency to the “appropriate public jurisdiction” prior to the completion of a LRPMP.

## **DISCUSSION**

### **A. The Properties Are “Governmental Purpose” and the City is the “Appropriate Public Jurisdiction”**

The Successor Agency is requesting that the Oversight Board approve the transfer of the Properties to the City of Montebello in advance of the LRPMP, as authorized by the Dissolution Act and DOF. The Properties unquestionably satisfy the definition of “governmental purpose” property set forth in the Dissolution Act:

- Parcel # 1 is the location of the Montebello Police Facility and City Hall (§ 34181(a) [governmental purpose properties include “police and fire stations...and local administrative buildings...”]);
- Parcel # 2 is the location of Henry Acuna public park (§ 34181(a) [governmental purpose properties include “parks”].)

In addition, the City of Montebello is clearly the “appropriate public jurisdiction” to which the Properties should be transferred, as Parcel # 1 serves as administrative offices to the Montebello Police Department and City, and Parcel # 2 is a free public park providing open space and recreation to City residents.

### **B. Immediate Transfer of the Properties Will Benefit The City, Successor Agency, and Taxing Entities**

Immediate transfer of the Properties to the City (as opposed to transferring such properties at a later date in accordance with the LRPMP) is advantageous to the City, Successor Agency, and taxing entities.

First, it will enable the City to proceed with refinancing the 2000 COPs. This will save the City hundreds of thousands of dollars over the life of the COPs to the direct benefit of City residents, as the refinancing will “free up” scarce public dollars to fund general health and safety services to the community. The benefits of refinancing redevelopment-related debt in the aftermath of the Dissolution Act and in the current economic climate has been recognized by Los Angeles County, which has launched an extensive program to refinance redevelopment bond issuances.

Second, and related to the first, immediate transfer to the City will ensure continued governmental ownership of indispensable public facilities, and will enable the City to encumber the Properties with leases and/or other agreements that benefit the public but are arguably prevented by the Dissolution Act with respect to Agency-owned properties.

Finally, immediate transfer will conserve Successor Agency staff time and resources attendant with maintaining the Properties and unnecessarily including the Properties in the LRMPM. Because the Properties are currently owned by the Successor Agency, any expense incurred in the maintenance and disposal of the Properties is payable from property taxes that otherwise would be allocated to the taxing entities. (§§ 34171(a),(d)(1)(F), 34177.3(b) [cost of maintaining assets prior to disposition are enforceable obligations and excluded from the administrative cost allowance].)

**C. The Statutory Perquisites For Oversight Board Approval Have Been Completed**

On July 10, 2013, the Successor Agency adopted a Resolution finding and declaring that the Properties are “governmental purpose,” and requesting that the Oversight Board approve their transfer to the City. (**Attachment “F”** [SA Resolution].) On July 14, 2013, public notice of the Oversight Board’s July 24 meeting and consideration of the Property transfer was provided. (**Attachment “G”** [Public Notice]; § 34181(f) [approvals of governmental purpose property transfers must occur at a public meeting with 10 day’s advance public notice].)

By adopting the attached Resolution (**Attachment “H”**), the Oversight Board will approve of the transfer of the Properties to the City, after which Successor Agency staff will submit notice of the Resolution to DOF for review. If DOF declines to review the action within five (5) days, it will become final and conclusive sixty (60) days after the Oversight Board’s approval. (§ 34181(f).) If DOF elects to review the action, it has sixty (60) days (DOF has taken the position in analogous transactions that it has up to one-hundred (100) days) to provide its final determination. (*Ibid.*)

**RECOMMENDATIONS**

It is recommended that the Montebello Oversight Board adopt the attached Resolution approving the transfer of real property that includes the Montebello Police Facility, Montebello City Hall, and Henry Acuna Park from the Montebello Successor Agency to the City of Montebello.